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Foundation for Resilient Societies

24 Front Street, Suite 203
Exeter NH 03833

October 15, 2019

Chairman Comer Randall
South Carolina Public Service Commission
101 Executive Center Dr, Suite 100
Columbia, SC 29210

Subject: Transparency in Enforcement of FERC/NERC Electric Reliability Standards

Dear Chairman Randall:

We urge your Commission to submit a comment in FERC Docket AD19-18-000. Please consider asking FERC for formal notification to state regulators when electric utilities violate federal reliability standards. The deadline for docket comments is Monday, October 28.

Regulatory failures mean that an electric grid blackout from natural disaster or deliberate attack could occur in your state at any time. For example, PG&E has violated vegetation management standards; two million residents of California were without electric power last week.

Are you given formal notice when utilities in South Carolina have violated electric reliability standards approved by FERC and enforced by the Regional Entities of NERC? And given written updates on the progress of mitigations negotiated as part of Notices of Penalty?

If your Commission instead must rely on NERC documents that redact identities of reliability standard violators, this is by intent. The FERC/NERC system of enforcement for reliability standards has been designed to withhold information from state regulators, the public, and others. Industry attorneys have promoted the erroneous idea that concealing the identity of violating utilities enhances national security. In contrast, experts in cybersecurity, including the National Institute of Standards and Technology, have concluded that "security through obscurity" does not provide real protection. It does shield electric utilities from regulatory accountability.

We have enclosed our recent Freedom of Information Act request and FERC response in which FERC decided to withhold the names of utilities that violated vegetation management standards. With disclosure denied and public scrutiny prevented, utilities lack incentive for improvement.

To their credit, FERC and NERC are considering ways to improve transparency when enforcing electric reliability standards. Please read the attached statement of Commissioner LaFleur.

If the current system of concealment is to be remedied, your timely comment to FERC is critical. Please contact me at thomas@resilientsocieties.org or 855-688-2430 x 701 with any questions.

Sincerely,



Thomas S. Popik
President
Foundation for Resilient Societies

Attachment

RECEIVED

OCT 22 2019

PSC SC
MAIL / DMS

Commissioner Cheryl A. LaFleur Statement**August 27, 2019****Docket No. AD19-18-000****Statement on FERC/NERC Staff White Paper on CIP Standards Notices of Penalties**

Today, staff at the Federal Energy Regulatory Commission (FERC) and the North American Electric Reliability Corporation (NERC) issued a joint White Paper to address NERC's submission, and the Commission's processing, of Notices of Penalty (NOPs) for violations of Critical Infrastructure Protection (CIP) Reliability Standards. As I mentioned at our Reliability Technical Conference in June, the handling and confidentiality of these NOPs has been an issue of growing controversy. As I advocated then, I think it is essential that FERC and NERC conduct public process to consider the appropriate balance between transparency and security in these instances. I am very pleased that such a process is being instituted today.

The procedures that NERC and FERC have followed in processing NOPs for CIP violations has been in place since before I joined FERC and has not been changed in the past decade, as outlined in the attached White Paper. I think it is highly appropriate that we consider changes to the process at this time. As I discussed at the technical conference, it is important that we handle NOPs so as to avoid subjecting the bulk electric system to risk of a cyber attack once a vulnerability is identified. At the same time, I believe state regulators, members of the public, and others have a legitimate interest in such violations, and we should seek to achieve as much transparency as we can consistent with protecting legitimate security interests.

I believe the FERC and NERC staff have put forth one proposal worthy of consideration for a way to handle these NOPs differently. I hope that we receive a wide range of comments on the White Paper, including any suggestions for alternative processes, which will allow FERC and NERC to move forward on this issue.

Foundation for Resilient Societies

24 Front Street, Suite 203

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FOIA-2019-69

Accepted: April 24, 2019

Track 2

Due Date: May 22, 2019

April 22, 2019

Leonard Tao
Freedom of Information Act Officer
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

Dear Mr. Tao:

This is a request under the Freedom of Information Act (FOIA). We hereby request copies of the full and unredacted Notices of Penalty (NOP), including settlement agreements and corporate names of Unidentified Registered Entities, submitted by the North American Electric Reliability Corporation (NERC) under the following FERC dockets for fines assessed for violators of NERC Standard FAC-003-1 — Transmission Vegetation Management Program:

1. NP12-20-000
2. NP11-137-000
3. NP11-128-000
4. NP11-1-000

In order to help you to determine our status for assessment of fees, you should know that the Foundation for Resilient Societies is a non-profit organization with the mission of boosting critical infrastructure resilience and recoverability. Education of the public on risks to the U.S. Bulk Power System is a key part of our activities.

We request a waiver of all fees for this request. Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in our commercial interest. Because of catastrophic and deadly fires in the Western Interconnection caused by transmission lines contacting vegetation, the public has an interest in knowing which utilities have been fined for non-compliance with vegetation management standards and the terms of their settlement agreements. For each standard violation in the above requested NOP, the Violation Risk Factor is "high."

If you have any questions regarding this request, please contact me at 855-688-2430, ext. 701 or thomasp@resilientsocieties.org.

We look forward to receiving your response within the twenty day statutory time period. Thank you for your consideration of this FOIA request.

Sincerely,



Thomas S. Popik
Chairman and President
Foundation for Resilient Societies

Federal Energy Regulatory Commission
Washington, D.C. 20426

JUN 24 2019

Re: FOIA FY19-69 (Rolling)
Initial Response Letter

VIA E-MAIL AND U.S MAIL

Thomas S. Popik
Chairman and President
Foundation for Resilient Societies
24 Front Street, Suite 203
Exeter, NH 03833
thomasp@resilientsocieties.org

Dear Mr. Popik:

This is an initial response to your correspondence received on April 24, 2019, in which you requested information pursuant to the Freedom of Information Act (FOIA), and the Federal Energy Regulatory Commission's (Commission) FOIA regulations, 18 C.F.R. § 388.108 (2019). Your request seeks "copies of the full and unredacted Notices of Penalty (NOP), including settlement agreements and corporate names of Unidentified Registered Entities (UREs), submitted by the North American Electric Reliability Corporation (NERC) under the following FERC dockets for fines assessed for violators of NERC Standard FAC-003-1 — Transmission Vegetation Management Program: NP12-20-000; NP11-137-000; NP11-128-000; and NP11-1-000."

On June 6, 2019, Commission staff notified NERC, as well as the relevant UREs, of the request and provided an opportunity to comment pursuant to 18 C.F.R. § 388.112. NERC submitted comments on June 13, 2019, objecting to the release of the identity of the UREs generally and the requested documents. As explained below, the information is protected from disclosure pursuant to FOIA Exemptions 3 and 7(F), and therefore will not be disclosed.

Before determining whether the identity of a URE may be released, the Commission must consider a number of factors. Among other things, these factors include the nature of the Critical Infrastructure Protection (CIP) violation, including whether it involves a Technical Feasibility Exemption (TFE); whether mitigation is complete; the content of the public and non-public versions of the Notice of Penalty; the extent to which the disclosure of the pertinent URE identity would be useful to someone seeking to cause harm; whether an audit has occurred since the violation(s); whether the violation(s) was administrative or technical in nature; and the length of time that has elapsed since the filing of the public Notice of Penalty. An application of these factors will dictate whether a particular FOIA exemption, including 7(F) and/or Exemption 3, is appropriate. See *Garcia v. U.S. DOJ*, 181 F. Supp. 2d 356, 378 (S.D.N.Y. 2002) ("In

evaluating the validity of an agency's invocation of Exemption 7(F), the court should within limits, defer to the agency's assessment of danger.") (*citation and internal quotations omitted*).

Based on application of the various factors discussed above, I conclude that disclosing the identity of the UREs in NP11-137 and NP11-128, in combination with the information contained in the public versions of the Notices of Penalty, would create a risk of harm or detriment to life, physical safety, or security because the specified UREs could become the target of a potentially bad actor. *See* 5 U.S.C. § 552(b)(7)(F) (protecting law enforcement information where release "could reasonably be expected to endanger the life or physical safety of any individual."); *see also* the Fixing America's Surface Transportation Act, Pub. L. No. 114-94, § 61003 (2015) (specifically exempting the disclosure of CEII and establishing applicability of FOIA Exemption 3, 5 U.S.C. § 552(b)(3)). Similarly, I conclude that the non-public documents sought in your request relating to these dockets are protected by FOIA Exemptions 3 and 7(F). Accordingly, the names of the UREs associated with NP11-137 and NP11-128 and the associated non-public documents will not be disclosed.

Additional determinations addressing the remaining documents will follow on a rolling basis.¹ Commission staff will endeavor to provide you with another determination within twenty (20) business days of the date of this letter. Ordinarily, any appeal from a FOIA determination must be filed within 90 days of the date of issuance as provided by the Freedom of Information Act and 18 C.F.R. § 388.110(a)(1) of the Commission's regulations. However, because your request is being processed on a rolling basis, the Commission will hold your appeal rights in abeyance pending a final determination. This will allow you to file a single appeal at the conclusion of our processing of your request.

If you decide to appeal, this appeal must be in writing, addressed to James P. Danly, General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, and clearly marked "Freedom of Information Act Appeal."

¹ *See S. Yuba River Citizens League v. Nat'l Marine Fisheries Serv.*, No. Civ. S-06-2845, 2008 U.S. Dist. LEXIS 107177, 47 (E.D. Cal. June 20, 2008) (supporting the practice of releasing documents on a rolling basis); *Hinton v. Fed Bureau of Investigations*, 527 F. Supp. 223, 225 (E.D. Penn. 1981) (noting that rolling responses preserve the government's right to carefully review material while promoting FOIA's disclosure goals); *see also* U.S. Dep't of Justice, *FOIA Post*, "OIP Guidance: The importance of Good Communication with FOIA requesters," (posted 2010) (stating agencies should provide rolling responses for requests involving voluminous material.).

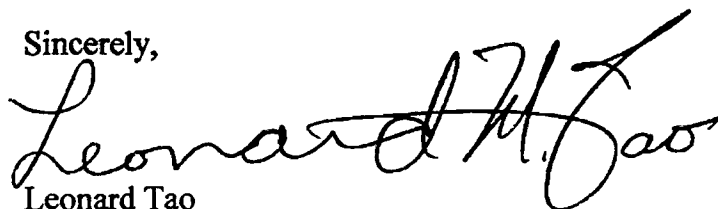
FOIA FY19-69

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Please include a copy to Charles A. Beamon, Associate General Counsel, General and Administrative Law, at the same address.

You also have the right to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services (OGIS). Using OGIS services does not affect your right to pursue your appeal. You may contact OGIS by mail at Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, MD 20740-6001; email at ogis@nara.gov; telephone at 301-837-1996; facsimile at 301-837-0348; or toll-free at 1-877-684-6448.

Sincerely,



Leonard Tao

Director

Office of External Affairs

cc:

Edwin G. Kichline
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bcc